

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

1. **Section Affected**
Article 4
R12-15-401
Table A
- Rulemaking Action**
New Article
New Section
New Table
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 45-105(B)(1)
Implementing statute: A.R.S. § 41-1073(A)
3. **The effective date of the rules:**
December 31, 1998
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 3 A.A.R. 1804, July 7, 1997.
Notice of Proposed Rulemaking: 3 A.A.R. 2625, October 3, 1997.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Martha J. McConnell
Address: Arizona Department of Water Resources
500 North Third Street
Phoenix, Arizona 85004
Telephone: (602) 417-2420
Fax: (602) 417-2415
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
A.R.S. § 41-1073 required adoption of time-frames during which the agency will grant or deny each type of license that it issues.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
The major impact of the time-frame rules will be on the Department itself. There will be no major changes in the way a license is processed within the Department. However, a tracking system utilizing commercial software will be implemented to assure that the time-frames identified for each license are met. Staff time will be allocated for training and to make minor changes in the licensing process. The budgetary impact on the Department is anticipated to be substantial in the first year and much less in the following years. In the long term, costs should be offset by increased efficiency and enhanced management oversight.

The Department expects that most license applicants will experience only small changes in the way they interact with the Department. Application review will not change significantly. More types of applications will be reviewed using a "team" approach for central management of tasks and coordination of communications to the applicant. Certain new statutory provisions may have unexpected impacts. Time limits will increase pressure to issue licensing decisions. A.R.S. § 41-1075 provides that the agency may make only a single, comprehensive, written request for more information on an application during the substantive review time frame. On occasion, this restriction may preclude the Department from finding a solution through an itera-

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tive process with the applicant, as has often worked in the past. It will be more important for applicants to submit thoroughly prepared applications. In general, applicants will be the recipients of increases in efficiency and oversight.

The overall economic impact of the time-frame rules on applicants is difficult to identify monetarily. Costs of implementation will be offset by increases in efficiency and management oversight. Application fees will not change. Some applicants will realize an economic benefit in knowing when a licensing decision must be made.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

R12-15-401(2). In response to comment from the public and GRRC staff, the Department rewrote the provision governing what happens when an applicant fails to provide information missing from an incomplete application. If the failure continues for more than 60 days, the Department does not "reject" the application but may deem it withdrawn and close the file. A sentence was added to clarify that the application may be refiled. The provision, with new language underlined, now states:

"An applicant with an incomplete application shall supply the missing information within 60 days from the date of the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Department may reject deem the application withdrawn and close the file. Closing a file under this provision does not preclude an applicant from filing a new application."

R12-15-401(5). In response to comment from the public and GRRC staff, the Department deleted the provision regarding amendments to applications.

R12-15-401(7). In response to comment from public, the Department added language to clarify that the licensing time-frames will apply only to applications filed after the effective date of the rule. The provision, with new language underlined, now states:

"G. The licensing time-frames rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A) and apply to all applications filed after that date."

Table A. Items 21, 22 and 23. The Department added a citation to A.R.S. § 45-476 to the Legal Authority column.

Table A. Item 26 and 27. The Department struck citation to A.R.S. § 45-480 from the Legal Authority column.

The Department also made non-substantive and grammatical changes to the Rules at the request of GRRC staff.

10. A summary of the principal comments and the agency response to them:

Comment

Rule should describe effect of rejected application. R12-15-401(2).

Agency response

Accepted. Adopted rule now states that if an applicant fails for more than 60 days to provide requested information, the Department may deem the application withdrawn. The rule also states that after an application is deemed withdrawn, a new application may be filed.

Comment

Rules' effective date is unclear. R12-15-401(7).

Agency response

Accepted. Adopted rule states that time-frames apply to applications filed after the effective date.

Comment

Corrections to legal citations. Items 21, 22, 23, 26, and 27.

Agency response

Corrections made to avoid reader confusion.

Comment

The time-frames for severance and transfer and assured water supply designations and certificates are too long. Items 13, 70, and 71.

Agency response

Department staff must assist applicants, review water right, and make site visit. Applications arrive in batches. Work flow patterns and the need for experienced staff to review applications require more time. The Department has important responsibilities to water rightholders and the public.

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Comment

Rule should include agreements to extend time and penalties for exceeding time-frames.

Agency response

These provisions are clear in the statute and do not require a rule to interpret them.

Comment

It is inappropriate to extend the time-frame for substantial changes to an application. R12-15-401(5).

Agency response

Accepted. The provision was deleted.

Comment

There should be a preliminary review of water storage applications to catch errors that are easily corrected.

Agency response

Accepted. The change is being made administratively.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
Not applicable.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 4. LICENSING TIME-FRAMES

Section

R12-15-401. Licensing Time-Frames

Table A. Licensing Time-Frames Table

ARTICLE 4. LICENSING TIME-FRAMES

R12-15-401. Licensing Time-Frames

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001(11). The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Department may deem the application withdrawn and close the file. Closing a file under this provi-

sion does not preclude the applicant from filing a new application.

3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.

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5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days. 1073(A), and apply to all applications filed after that date.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-
7. The licensing time-frames are set forth in Table A.

**TABLE A:
Licensing Time-Frames Table**

| No. | License | Legal Authority | Completeness Review (Days)* | Substantive Review (Days)* | Overall Time-Frame (Days)* |
|-----|---|--|-----------------------------|----------------------------|----------------------------|
| 1 | <u>Filling a body of water with poor quality water</u> | <u>A.R.S. § 45-132(C)</u> | <u>30</u> | <u>60</u> | <u>90</u> |
| 2 | <u>Interim water use in body of water</u> | <u>A.R.S. § 45-133</u> | <u>30</u> | <u>60</u> | <u>90</u> |
| 3 | <u>Temporary emergency permit for use of surface water or groundwater in body of water</u> | <u>A.R.S. § 45-134</u> | <u>10</u> | <u>20</u> | <u>30</u> |
| 4 | <u>Permit to appropriate water (non-instream flow)</u> | <u>A.R.S. §§ 45-151 and 45-153</u> | <u>30</u> | <u>420</u> | <u>450</u> |
| 5 | <u>Permit to appropriate water (instream flow)</u> | <u>A.R.S. §§ 45-151 and 45-153</u> | <u>50</u> | <u>530</u> | <u>580</u> |
| 6 | <u>Change in use of water</u> | <u>A.R.S. § 45-156(B)</u> | <u>30</u> | <u>375</u> | <u>405</u> |
| 7 | <u>Exception to limitation on time of completion of construction</u> | <u>A.R.S. § 45-160</u> | <u>5</u> | <u>15</u> | <u>20</u> |
| 8 | <u>Primary reservoir permit</u> | <u>A.R.S. § 45-161</u> | <u>30</u> | <u>420</u> | <u>450</u> |
| 9 | <u>Secondary reservoir permit</u> | <u>A.R.S. § 45-161</u> | <u>30</u> | <u>420</u> | <u>450</u> |
| 10 | <u>Certificate of water right (non-instream flow)</u> | <u>A.R.S. § 45-162</u> | <u>20</u> | <u>100</u> | <u>120</u> |
| 11 | <u>Certificate of water right (instream flow)</u> | <u>A.R.S. § 45-162</u> | <u>20</u> | <u>190</u> | <u>210</u> |
| 12 | <u>Reissuance of permit or certificate held by the United States or State of Arizona</u> | <u>A.R.S. § 45-164(C)</u> | <u>10</u> | <u>80</u> | <u>90</u> |
| 13 | <u>Severance and transfer</u> | <u>A.R.S. § 45-172 (excluding 172.6)</u> | <u>30</u> | <u>390</u> | <u>420</u> |
| 14 | <u>Stockpond certificate</u> | <u>A.R.S. § 45-273</u> | <u>30</u> | <u>190</u> | <u>220</u> |
| 15 | <u>Transporting water from this state **</u> | <u>A.R.S. § 45-292</u> | <u>120</u> | <u>300</u> | <u>420</u> |
| 16 | <u>Waiver of water conserving plumbing fixture requirement</u> | <u>A.R.S. § 45-315</u> | <u>10</u> | <u>3</u> | <u>13</u> |
| 17 | <u>Irrigated acreage in an irrigation non-expansion area</u> | <u>A.R.S. § 45-437</u> | <u>30</u> | <u>90</u> | <u>120</u> |
| 18 | <u>Substitution of acres in an irrigation non-expansion area/ flood damage</u> | <u>A.R.S. § 45-437.02</u> | <u>30</u> | <u>90</u> | <u>120</u> |
| 19 | <u>Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation</u> | <u>A.R.S. § 45-437.03</u> | <u>30</u> | <u>90</u> | <u>120</u> |
| 20 | <u>Reversal of substitution of acres irrigated with Central Arizona Project water</u> | <u>A.R.S. § 45-452(G)</u> | <u>30</u> | <u>90</u> | <u>120</u> |
| 21 | <u>Type I non-irrigation grandfathered right associated with irrigation land retired 1965-1980</u> | <u>A.R.S. §§ 45-463, 45-476.01, 45-476</u> | <u>30</u> | <u>90</u> | <u>120</u> |

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| No. | License | Legal Authority | Completeness Review (Days)* | Substantive Review (Days)* | Overall Time-Frame (Days)* |
|-----|---|--|-----------------------------|----------------------------|----------------------------|
| 22 | Type 2 non-irrigation grandfathered right | A.R.S. §§ 45-464, 45-476.01, 45-476 | 30 | 90 | 120 |
| 23 | Irrigation grandfathered right | A.R.S. §§ 45-465, 45-476.01, 45-476 | 30 | 90 | 120 |
| 24 | Substitution of acres in an active management area/flood damaged acres | A.R.S. § 45-465.01 | 30 | 90 | 120 |
| 25 | Substitution of acres in an active management area/impediments to efficient irrigation | A.R.S. § 45-465.02 | 30 | 90 | 120 |
| 26 | Type 1 non-irrigation right retired after 6/12/80 | A.R.S. § 45-469 | 30 | 90 | 120 |
| 27 | Restoration of retired irrigation grandfathered right | A.R.S. § 45-469(O) | 30 | 90 | 120 |
| 28 | Revised certificate for new or additional points of withdrawal for a Type 2 right | A.R.S. § 45-471(C) | 45 | 135 | 180 |
| 29 | Conveyance of irrigation grandfathered right for electrical energy generation | A.R.S. § 45-472(B)(2) | 30 | 90 | 120 |
| 30 | Conveyance of irrigation grandfathered right for non-irrigation use within service area | A.R.S. § 45-472(C) | 30 | 90 | 120 |
| 31 | Contract to supply groundwater | A.R.S. § 45-492(C) | 15 | 90 | 105 |
| 32 | Extension of service area to provide disproportionately large amount of water to large user | A.R.S. § 45-493(A)(2) | 15 | 90 | 105 |
| 33 | Addition/exclusion of acres by irrigation district | A.R.S. § 45-494.01(A) | 30 | 90 | 120 |
| 34 | Delivery of groundwater from an irrigation district to a general industrial use permit holder | A.R.S. § 45-497(B) | 15 | 60 | 75 |
| 35 | Issuance/renewal/modification of dewatering permit | A.R.S. §§ 45-513 and 45-527 | 30 | 70 | 100 |
| 36 | Issuance/renewal/modification of mineral extraction and metallurgical processing permit | A.R.S. §§ 45-514 and 45-527 | 30 | 70 | 100 |
| 37 | Issuance/renewal/modification of general industrial use permit | A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527 | 30 | 70 | 100 |
| 38 | Issuance/renewal/modification of poor quality groundwater withdrawal permit | A.R.S. §§ 45-516 and 45-527 | 30 | 70 | 100 |
| 39 | Issuance/renewal/modification of temporary permit for electrical energy generation | A.R.S. §§ 45-517 and 45-527 | 30 | 70 | 100 |

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| No. | License | Legal Authority | Completeness Review (Days)* | Substantive Review (Days)* | Overall Time-Frame (Days)* |
|-----|---|--|---|--|--|
| 40 | <u>Issuance/extension/modification of temporary dewatering permit</u> | <u>A.R.S. §§ 45-518 and 45-527</u> | <u>30</u> | <u>70</u> | <u>100</u> |
| 41 | <u>Emergency temporary dewatering permit</u> | <u>A.R.S. § 45-518(D)</u> | <u>3</u> | <u>7</u> | <u>10</u> |
| 42 | <u>Issuance/renewal/modification of drainage water withdrawal permit</u> | <u>A.R.S. §§ 45-519 and 45-527</u> | <u>30</u> | <u>70</u> | <u>100</u> |
| 43 | <u>Issuance/renewal/modification of hydrologic testing permit</u> | <u>A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527</u> | <u>30</u> | <u>30</u> | <u>60</u> |
| 44 | <u>Change of location of use</u> | <u>A.R.S. §§ 45-520(A), 45-521, and 45-527</u> | <u>30</u> | <u>30</u> | <u>60</u> |
| 45 | <u>Conveyance of a groundwater withdrawal permit</u> | <u>A.R.S. § 45-520(B)</u> | <u>30</u> | <u>30</u> | <u>60</u> |
| 46 | <u>Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area</u> | <u>A.R.S. § 45-552(B)</u> | <u>45</u> | <u>105</u> | <u>150</u> |
| 47 | <u>Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area</u> | <u>A.R.S. § 45-554(B)</u> | <u>45</u> | <u>105</u> | <u>150</u> |
| 48 | <u>Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area</u> | <u>A.R.S. § 45-555(B)</u> | <u>45</u> | <u>105</u> | <u>150</u> |
| 49 | <u>Well spacing requirements for withdrawing groundwater for transportation to an active management area</u> | <u>A.R.S. § 45-559</u> | <u>45</u> | <u>105</u> | <u>150</u> |
| 50 | <u>Groundwater replenishment district's preliminary or long-term replenishment plan **</u> | <u>A.R.S. § 45-576.03</u> | <u>As prescribed by A.R.S. § 45-576.03(A)</u> | <u>As prescribed by A.R.S. § 45-576.03(B), (C), (D), and (E)</u> | <u>As prescribed by A.R.S. § 45-576.03</u> |
| 51 | <u>Conservation district or water district long-term replenishment plan **</u> | <u>A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)</u> | <u>As prescribed by A.R.S. § 45-576.03(I)</u> | <u>As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)</u> | <u>As prescribed by A.R.S. § 45-576.03</u> |
| 52 | <u>Notice of intent to abandon a well</u> | <u>A.R.S. § 45-594 and A.A.C. R12-15-816</u> | <u>15</u> | <u>15</u> | <u>30</u> |
| 53 | <u>Well construction request for variance</u> | <u>A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820</u> | <u>15</u> | <u>35</u> | <u>50</u> |
| 54 | <u>Well driller license</u> | <u>A.R.S. § 45-595(C)</u> | <u>25</u> | <u>105</u> | <u>130</u> |
| 55 | <u>Single well license</u> | <u>A.R.S. § 45-595(D)</u> | <u>25</u> | <u>105</u> | <u>130</u> |
| 56 | <u>Renewal or reactivation of well drilling license</u> | <u>A.R.S. § 45-595(C) and A.A.C. R12-15-806</u> | <u>25</u> | <u>15</u> | <u>40</u> |
| 57 | <u>Notice of intent to drill</u> | <u>A.R.S. § 45-596, and A.A.C. R12-15-810</u> | <u>15</u> | <u>0</u> | <u>15</u> |
| 58 | <u>Well construction permit</u> | <u>A.R.S. § 45-599</u> | <u>30</u> | <u>60</u> | <u>90</u> |
| 59 | <u>Alternative water measuring devices</u> | <u>A.R.S. § 45-604 and A.A.C. R12-15-909</u> | <u>15</u> | <u>60</u> | <u>75</u> |

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| No. | License | Legal Authority | Completeness Review (Days)* | Substantive Review (Days)* | Overall Time-Frame (Days)* |
|-----|---|--|---|--|--|
| 60 | <u>Underground storage facility permit</u> | <u>A.R.S. §§ 45-811.01 and 45-871.01</u> | <u>As prescribed by A.R.S. § 45-871.01(B)</u> | <u>As prescribed by A.R.S. § 45-871.01(D), (G), and (H)</u> | <u>As prescribed by A.R.S. § 45-871.01</u> |
| 61 | <u>Groundwater savings facility permit</u> | <u>A.R.S. §§ 45-812.01 and 45-871.01</u> | <u>As prescribed by A.R.S. § 45-871.01(B)</u> | <u>As prescribed by A.R.S. § 45-871.01(D), (G), and (H)</u> | <u>As prescribed by A.R.S. § 45-871.01</u> |
| 62 | <u>Storage facility permit/renewal/conveyance/modification</u> | <u>A.R.S. §§ 45-814.01 and 45-871.01</u> | <u>As prescribed by A.R.S. § 45-871.01(B)</u> | <u>As prescribed by A.R.S. § 45-871.01(D), (G), and (H)</u> | <u>As prescribed by A.R.S. § 45-871.01</u> |
| 63 | <u>Water storage permit/modification/conveyance</u> | <u>A.R.S. §§ 45-831.01 and 45-871.01</u> | <u>As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)</u> | <u>As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)</u> | <u>As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01</u> |
| 64 | <u>Recovery well permit</u> | <u>A.R.S. §§ 45-834.01 and 45-871.01</u> | <u>As prescribed by A.R.S. § 45-871.01(B)</u> | <u>As prescribed by A.R.S. § 45-871.01(F), (G), and (H)</u> | <u>As prescribed by A.R.S. § 45-871.01</u> |
| 65 | <u>Emergency temporary recovery well permit</u> | <u>A.R.S. § 45-834.01(D)</u> | <u>5</u> | <u>10</u> | <u>15</u> |
| 66 | <u>Issuance/renewal/modification of water exchange permit</u> | <u>A.R.S. §§ 45-1041, 45-1042, and 45-1045</u> | <u>As prescribed by A.R.S. § 45-1042(A)</u> | <u>As prescribed by A.R.S. § 45-1042(B), (C), and (D)</u> | <u>As prescribed by A.R.S. § 45-1042</u> |
| 67 | <u>Modification of previously enrolled or permitted water exchange/non-Colorado River</u> | <u>A.R.S. § 45-1041(B)</u> | <u>60</u> | <u>90</u> | <u>150</u> |
| 68 | <u>Construction, enlargement, repair, alteration, or removal of a dam</u> | <u>A.R.S. §§ 45-1203, 45-1206, and 45-1207</u> | <u>120</u> | <u>60</u> | <u>180</u> |
| 69 | <u>Weather modification license</u> | <u>A.R.S. § 45-1601</u> | <u>15</u> | <u>60</u> | <u>75</u> |
| 70 | <u>Certificate of Assured Water Supply</u> | <u>A.A.C. R12-15-702, A.R.S. §§ 45-576 and 45-578</u> | <u>150</u> | <u>60</u> | <u>210</u> |
| 71 | <u>Designation or Modification of Designation of Assured Water Supply</u> | <u>A.A.C. R12-15-702 and R12-15-714; A.R.S. § 45-576</u> | <u>150</u> | <u>60</u> | <u>210</u> |
| 72 | <u>Analysis of Assured Water Supply/unplatted development plan</u> | <u>A.A.C. R12-15-712, A.R.S. § 45-576(H)</u> | <u>150</u> | <u>30</u> | <u>180</u> |
| 73 | <u>Assured Water Supply for State lands</u> | <u>A.A.C. R12-15-713, A.R.S. § 37-334(F)</u> | <u>30</u> | <u>60</u> | <u>90</u> |
| 74 | <u>Water adequacy report</u> | <u>A.A.C. R12-15-716, A.R.S. § 45-108</u> | <u>60</u> | <u>60</u> | <u>120</u> |
| 75 | <u>Designation or Modification of Designation of Adequate Water Supply</u> | <u>A.A.C. R12-15-716, A.A.C. R12-15-725, A.R.S. § 45-108</u> | <u>150</u> | <u>60</u> | <u>210</u> |
| 76 | <u>Analysis of water adequacy/unplatted</u> | <u>A.R.S. § 45-108, A.A.C. R12-15-723</u> | <u>60</u> | <u>60</u> | <u>120</u> |
| 77 | <u>Adequate Water Supply for State lands</u> | <u>A.R.S. § 45-108, A.A.C. R12-15-724</u> | <u>30</u> | <u>60</u> | <u>90</u> |

* The computation of days is prescribed by subsection (4).

** Hearing is required